

[REDACTED]

[REDACTED]

SEP 24 1992

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information submitted shows that you were incorporated under the nonprofit laws of the State of [REDACTED] on [REDACTED].

Your primary purpose and activity is to provide quality consistent, educational and affordable child care. You are operated on a franchise basis. You currently service [REDACTED] homes serving [REDACTED] children. Each home in itself is a private business. Under the Franchise Agreement each home is granted the right to use the trade name "[REDACTED]". You will lend certain equipment and supplies to the franchisees. Each franchisee is required to pay you \$[REDACTED] per week for each child which is not the child of a state employee. Services provided to children of state employees are paid for through a grant from [REDACTED]. You also will have agreements with certain private employers. Each employer for a set fee will be entitled to a set number of slots in the private homes of your franchisees. You stated that anyone with the ability to pay is eligible for your franchisees' child-care services.

Section 501(c)(3) of the Code provides for the exemption from federal tax of organizations that are organized and operated exclusively for charitable and educational purposes, no part of the net earnings of which inures to the benefit of any individual.

Section 501(k) of the Code provides that for purposes of section 501(c)(3) of the Code the term "educational purposes" includes the providing of care of children away from their home if (1) substantially all of the care provided by the organization is for the purposes of enabling individuals to be gainfully employed, and (2) the services provided by the organization are available to the general public.

Section 1.501(c)(3)-1(a) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section. An organization that fails to meet either the organizational or the operational test is not exempt.

Section 1.501(c)(3)-1(b)(4) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized.

Section 1.501(c)(3)-1(c) of the regulations provides that an organization will not be regarded as "operated exclusively" for one or more exempt purposes if more than an insubstantial part of its activities is not in furtherance of a purpose described in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not operated exclusively for one or more purposes unless it serves a public rather than a private interest.

Section 1.501(c)(3)-1(d)(2) of the regulations states that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense. Such terms includes: relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monument, or works; lessening of the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and to combat community deterioration and juvenile delinquency.

Section 1.501(c)(3)-1(e)(1) of the Income Tax Regulations provides that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade

or business, as defined in section 513. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and of the trade or business which are in furtherance of one or more exempt purposes.

The presence of a single purpose not described in section 501(c)(3) of the Code, if substantial in nature, will preclude exemption under section 501(c)(3) regardless of the number or importance of truly exempt purposes. See Better Business Bureau v. U.S., 326 U.S. 279 (1945), Ct. D. 1650, 1945 C.B. 375.

Although an incidental private benefit will not destroy the qualifications of an otherwise educational organization, where an organization is serving both public and private interests the private benefit must be clearly incidental to the overriding public interest. A contrary finding will indicate that the organization is serving private interests. Benedict Ginsberg v. Commissioner, 46 T.C. 47 (1966).

The information submitted show that you amended your bylaws to distribute your assets for exempt purposes upon dissolution. This provision was not in your articles. However, section 1.501(c)(3)-1(b)(4) of the regulations provides that an organization is only organized for exempt purposes if such a provision is in an organization's articles of incorporation.

An organization is not exempt merely because its operations are not conducted for the purpose of producing a profit. The operation of a franchise arrangement with each of your franchisees paying you a fee and using your name is a trade or business ordinarily carried on for a profit. In addition, the providing of services to day-care homes that are operated as businesses and which are not exempt under section 501(c)(3) of the Code serves the private interests of these owners more than an insubstantial way.

You do not qualify for exempt status under section 501(k) of the Code. You do not directly provide day care but merely provide services to those who do. Also, the facilities provided by your franchisees are not open to the general public as is required by section 501(k) since many of the slots in these facilities will be reserved for children of state employees and specified private employers.

Therefore, it is our conclusion that you are neither organized nor operated exclusively for one or more purposes as specified in section 501(c)(3) of the Code. Thus, you are not entitled to be recognized as exempt from federal income tax under section 501(c)(3) of the Code. You are required to file federal

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income tax returns and contributions to you are not deductible by donors under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have the right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State officials will be notified of this action in accordance with section 6104(c) of the Code.

Sincerely yours,

[REDACTED]

[REDACTED]  
Chief, Exempt Organizations  
Rulings Branch 2

cc: [REDACTED]

cc: [REDACTED]

[REDACTED]

[REDACTED]

9-14-92

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